

PAMELA ANN FIMPLE

IBLA 84-82

Decided March 13, 1984

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneously filed oil and gas lease application W-85526.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: Applications: Filing

Under 43 CFR 3112.2-1(b), a simultaneous oil and gas lease application must be rendered in a manner to reveal the name of the applicant, the name of the signatory, and their relationship. Where there is no reference on the application to the signatory's relationship to the applicant, nor any reference to a qualifications file where the necessary information might be found, the requirements of the regulation have not been satisfied.

APPEARANCES: Robert A. Lees, Esq., Denver, Colorado, for appellant;  
C. M. Peterson, Esq., Denver, Colorado, for intervenor.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Pamela Ann Fimple appeals from a decision dated October 3, 1983, of the Wyoming State Office, Bureau of Land Management (BLM), rejecting her first-drawn simultaneously filed oil and gas lease application, W-85526, for parcel WY-215 in the May 1983 drawing. BLM found that the application did not indicate a relationship between the signatory and the applicant, in violation of 43 CFR 3112.2-1(b). <sup>1/</sup>

On September 2, 1983, BLM wrote appellant stating as follows:

Your offer to lease was received August 18, 1983. We have compared the signatures on your original application and the offer just received and they appear to be different. (See enclosed copies.)

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<sup>1/</sup> The oil and gas leasing regulations were revised in their entirety effective Aug. 22, 1983. See 48 CFR 33648 (July 22, 1983). The rule at issue in this case is found at 43 CFR 3112.2-1(c) of the revised regulations. For the purposes of this decision all references to the regulations are to those in the 1982 volume of Title 43 of the Code of Federal Regulations because those were the regulations in effect when the circumstances of this case arose.

Please furnish an explanation and if one of the signatures was affixed by someone else please explain the circumstances and their relationship to you. Also indicate if they have any interest in the lease when issued.

You are allowed thirty days from your receipt of this letter to furnish the requested information. If it is not received within the time allowed, your application will be rejected.

In response, appellant's husband, John W. Fimple, wrote BLM explaining that in his wife's absence he had "mistakenly signed her name," but that he saw no place on the form to indicate that he was her attorney in fact. With his letter, appellant's husband submitted a power of attorney dated February 16, 1983, by which appellant appointed her husband as agent and attorney in fact in matters of oil and gas lease filings.

In her statement of reasons appellant asserts that the ambiguity on her application was clarified by her husband's letter and the power of attorney in advance of the 30-day deadline given by BLM. Appellant also suggests that the defect for which BLM rejected her application is a trivial and inconsequential one which should not operate to deprive her of the lease.

The intervenor herein is the second-priority drawee for parcel WY-215. In her reply to the statement of reasons, intervenor contends that the defect in appellant's application may not be cured and that pursuant to the regulation, BLM properly rejected the application. 2/

[1] Departmental regulation, 43 CFR 3112.2-1(b), governing simultaneously filed oil and gas lease applications, reads in part: "Applications signed by anyone other than the applicant shall be rendered in a manner to reveal the name of the applicant, the name of the signatory and their relationship." Nothing on the face of this application, form 3112-6(a) (Part B), specifies the relationship between the signatory and the applicant listed. Nor is there any reference to a qualifications file. 3/ The back of Part B

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2/ Intervenor also points out that the power of attorney expressly prohibits the attorney in fact from filing offers on behalf of any other participants in the lottery. Intervenor alleges that BLM's computer printout of applicants for parcel WY-215 reflects that John W. Fimple also filed an application for this parcel on his own behalf. The computer printout does not, however, appear as part of the record on appeal. Intervenor states that this raises the issue of whether the applications could have been rejected for failure to comply with 43 CFR 3112.4-1(b) which clearly states the duties of an attorney in fact who completes a lease application. The BLM decision on appeal does not refer to this regulation, and in view of our disposition of the case under 43 CFR 3112.2-1(b) we need not discuss this issue.

3/ The Board has found that 43 CFR 3112.2-1(b) (1982) was satisfied where an application referred to a "Qualifications" file setting forth the relationship between the signatory and the applicant even though the relationship was not apparent on the face of the application. Hercules (A Partnership), 67 IBLA 151 (1982). See also, The Petrolar Group, 77 IBLA 232 (1983).

gives instructions for its completion. These instructions provide in pertinent part: "If anyone other than the applicant signs part B that person must set forth, along with their own signature, the name of the applicant and the relationship between them (Example: John Jones, by Oil Filing Company, agent, by William Budd; or John Jones, by Tom Smith, attorney in fact)."

We cannot agree with appellant that the requirements of the regulation are trivial or inconsequential. Strict adherence has been required in pertinent Board decisions. See, for example, The Petrolar Group, *supra*; Our Turn Now Association, 77 IBLA 24 (1983); Pioneer Farmout #1 Ltd., 76 IBLA 250 (1983). See also, Shaw Resources, Inc., 79 IBLA 153, 177, 91 I.D. \_\_\_\_ (1984). Moreover, in a simultaneous filing situation, if the oil and gas lease offer is defective, the defect is not curable. The rights of a third party intervene to preclude the ability to take curative action when the second drawee is advanced to the position of the first-qualified applicant. Thomas M. Bloch, 76 IBLA 364 (1983). See Altex Oil Corp., 61 IBLA 240 (1982); Robert E. Bergman, 53 IBLA 122 (1981). For a discussion of instances where deficiencies on applications filed in the simultaneous oil and gas leasing program may be found to be de minimis, see Shaw Resources, Inc., *supra*, at 79 IBLA 178, 179, 91 I.D. \_\_\_\_ (1984).

Appellant adverts to the fact that she was afforded 30 days by BLM to provide her explanation of the matter, and that she complied within that time. Therefore, it is argued, her application should have been accepted.

This is incorrect. It is not the mere making of an explanation within an allotted time which determines the acceptability of the application. Rather it is whether the explanation is adequate to show her conformity with the regulation. For example, had she responded within the 30-day period that she had signed the application with her left hand because she had suffered an injury to her right hand (with which she had written the comparative signature) she doubtless would have had her application accepted. However, her explanation served to establish that the application was executed by her attorney in fact, that this had not been disclosed as required, and that the regulation, therefore, had been breached. Rejection of the application was mandatory in the circumstances.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness  
Administrative Judge

We concur:

Wm. Philip Horton  
Chief Administrative Judge

Edward W. Stuebing  
Administrative Judge

